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EXAMINER	
ROSEN, ELIZABETH H	
ART UNIT	PAPER NUMBER
3692	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/791,518	BRADLEY ET AL.	
	Examiner	Art Unit	
	ELIZABETH ROSEN	3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 January 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *46-54 and 62-68* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *46-54 and 62-68* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. This action is in reply to the Request for Continued Examination filed on January 29, 2009.
2. Claims 1-45 and 55-61 have been canceled.
3. Claims 66-68 have been added.
4. Claims 46-54 and 62-68 are currently pending and have been examined.

Response to Arguments

5. The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

6. Examiner would like to point out that the Supreme Court in *KSR International Co. v. Teleflex Inc.* described seven rationales to support rejections under 35 U.S.C. 103:

- Combining prior art elements according to known methods to yield predictable results;
- Simple substitution of one known element for another to obtain predictable results;
- Use of known technique to improve similar devices (methods, or products) in the same way;
- Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- "Obvious to try" –choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; and
- Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Prior art is not limited just to the references being applied, but includes the understanding of one of ordinary skill in the art. The prior art reference (or references when combined) need not teach or suggest

all the claim limitations; however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. The "mere existence of differences between the prior art and an invention does not establish the invention's nonobviousness." see *Dann v. Johnson*, 425 U.S. 219, 230 (1976).

7. With regard to the rejections under 35 U.S.C. 101, Claims 46-54 and 62-68 have been rejected according to the standard in *Bilski*. Claim 46, for example, does not require the use of a machine. Applicant points out to "at least one identification tag" in Claim 46 in addressing the previous rejections under 35 U.S.C. 101. However, this claim does not require that something is actually done with the tag. For example, in the limitation of "requiring the second party to electronically read at least one identification tag associated with the audit," there is no certainty that the tag is actually read. Furthermore, if the tag is read, there is no indication that a machine is used to read the tag. Although the limitation states that the tag is read electronically, that is insufficient to show that a physical machine is used to read the tag.

8. Applicant argues that the combination of Carmichael and Mercer, as used in the rejection, is improper. Applicant's arguments have been fully considered, but they are not persuasive. Carmichael discusses floorplanning and explains that there is an agreement between the finance company and the dealer that provides that the vehicles (or other inventory) are collateral for the loan that the dealer gets from the finance company in order to purchase the vehicles (or other inventory) from the manufacturer. Because the finance company wants to be sure that it is being paid for any vehicles that are sold, the finance company continuously checks the dealer's floor to determine what merchandise is still on the floor and what has been sold. The difference between Carmichael and Applicant's invention is that in Carmichael, the finance company physically goes to the dealer to determine whether the dealer is complying with the agreement. On the other hand, in Applicant's claimed invention, the finance company does not physically go to the dealer. Rather, the finance company has the dealer electronically read identification information associated with the vehicles to determine whether the dealer is complying with the agreement. This limitation which is lacking in Carmichael is disclosed in Mercer. Mercer discloses a method of tracking and identifying vehicles on an auto dealer's lot. In one embodiment, according to Paragraph 0045 of Mercer, "a number of transmitters/receivers are positioned at strategic locations of an auto dealer's lot so that the RFID tags...on all of the vehicles can be read, regardless of where the vehicles are located on the lot." This method of identifying vehicles on the lot would provide confidence to the finance company because it can be assured that if a tag is read, the vehicle is located on the lot. Furthermore, Paragraph 0057 states that a report can be generated that shows any discrepancies between the vehicles that are supposed to be on the lot that those that are actually on the lot. This report could be provided to the finance company so that it can determine whether the dealer is complying with the agreement.

9. It would be obvious to substitute Carmichael's method of having a finance company physically go to the dealer location and audit the vehicles with Mercer's method of electronically determining which cars are located on the dealer's lot in order to "more quickly, accurately, and efficiently label, identify, track, and inventory new and previously-owned vehicles on an auto dealer's lot." (see Paragraph 0009 of Mercer). Additionally, it would be obvious to combine these references because of the rationale in KSR of simple substitution of one known element for another to obtain predictable results. Carmichael's method of having a finance company visit the dealer to audit the vehicles can be substituted with Mercer's method of electronically tracking vehicles in order to obtain the same result which is to assist a finance company in determining whether a dealer is complying with an agreement.

10. Applicant argues that Carmichael teaches away from "determining that the second party is complying or not complying with the agreement based on the audit information." Although Carmichael has the first party visit the floor, this feature is being substituted with features in Mercer, which permits the dealer to self-audit.

Claim Rejections - 35 USC § 101

11. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

12. **Claims 46-54 and 62-68** are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

13. An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

14. Here, Applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, these claims are non-statutory since they may be performed within the human mind.

15. The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

17. **Claims 46-51, 62, 63, 65, 66, and 68** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer** et al., U.S. Patent Application Publication Number 2004/0088228 A1.

Claim 46:

Carmichael discloses the limitations of:

- *notifying the second party of an audit of the asset* (see at least Carmichael, Page 2, Paragraph 1 ("During the 90-day period, the floorplan finance company checks the dealer's 'floor' every 30 days to determine what merchandise has been sold. This method of ensuring that the dealer meets his flooring obligation is known as 'pay-as-sold.'")); and
- *determining that the second party is complying or not complying with the agreement based on the audit information* (see at least Carmichael, Page 2, Paragraph 1 ("During the 90-day period, the floorplan finance company checks the dealer's 'floor' every 30 days to determine what merchandise has been sold. This method of ensuring that the dealer meets his flooring obligation is known as 'pay-as-sold.'")).

Carmichael does not disclose, but **Mercer**, however, does disclose:

- *requiring the second party to electronically read at least one identification tag associated with the audit* (see at least Mercer, Paragraph 0011 ("An RFID tag encoded with vehicle-specific information may be attached to or embedded in

both the window sticker and key tag label for identification and tracking purposes."); Paragraph 0033; Paragraph 0045; and Paragraph 0046); and

- *requiring the second party to send audit information based on the at least one identification tag to the first party* (see at least Mercer, Paragraph 0011; Paragraph 0012 (Data regarding the location of a vehicle is transmitted.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Claim 47:

Carmichael further discloses:

- *wherein the asset is a vehicle* (see at least Carmichael, Page 1, Paragraph 1 ("Floorplanning is the financing of dealer or distributor inventory by either a finance company or a bank. This type of inventory financing has been in existence for many years, particularly in the automotive [industry].")).

Claim 48:

Carmichael further discloses:

- *wherein the second party to the agreement is a vehicle dealer* (see at least Carmichael, Page 1, Paragraph 1 ("Floorplanning is the financing of dealer or distributor inventory by either a finance company or a bank. This type of inventory financing has been in existence for many years, particularly in the automotive [industry].")).

Claim 49:

Carmichael further discloses:

- *wherein the agreement is a financing agreement* (see at least Carmichael, Page 1, Paragraph 1 ("Floorplanning is the financing of dealer or distributor inventory by either a finance company or a bank. This type of inventory financing has been in existence for many years, particularly in the automotive [industry].")).

Claim 50:

Carmichael does not disclose, but **Mercer**, however, does disclose:

- *wherein the at least one identification tag includes a radio frequency identification tag* (see at least Mercer, Paragraph 0011 ("An RFID tag encoded with vehicle-specific information may be attached to or embedded in both the window sticker and key tag label for identification and tracking purposes."); Paragraph 0046; Paragraph 0057; and Paragraph 0058).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Claim 51:

Carmichael does not disclose, but **Mercer**, however, does disclose:

- *wherein the at least one identification tag includes a bar code* (see at least Mercer, Paragraph 0046 ("The handheld computing device 102 is preferably a pocket PC containing a bar code scanner/reader and an RFID tag reader."); Paragraph 0050; and Paragraph 0056).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using a bar code on identification tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Claim 62:

Carmichael further discloses:

- *wherein the asset is from a set consisting of a car, a truck, a recreational vehicle, a boat, a motorcycle, construction equipment, farm equipment, manufacturing equipment, containerized freight, art, an antique, and a collectible* (see at least Carmichael, Page 1, Paragraph 1 ("Floorplanning is the financing of dealer or distributor inventory by either a finance company or a bank. This type of inventory financing has been in existence for many years, particularly in the automotive [industry].")).

Claim 63:

Claim 63 is rejected using the same rationale that was used for the rejection of Claim 51.

Claim 65:

Carmichael discloses the limitations of:

- *determining compliance or non-compliance with the agreement based on the audit information* (see at least Carmichael, Page 2, Paragraph 1 ("During the 90-day period, the floorplan finance company checks the dealer's 'floor' every 30 days to determine what merchandise has been sold. This method of ensuring that the dealer meets his flooring obligation is known as 'pay-as-sold.'")).

Carmichael does not disclose, but **Mercer**, however, does disclose:

- *initiating the self-audit by requesting an electronic reading of at least one identification tag associated with an asset* (see at least Mercer, Paragraph 0011 ("An RFID tag encoded with vehicle-specific information may be attached to or embedded in both the window sticker and key tag label for identification and tracking purposes."); Paragraph 0033; Paragraph 0045; and Paragraph 0046); and
- *receiving audit information based on the electronic reading of the at least one identification tag* (see at least Mercer, Paragraph 0011; Paragraph 0012 (Data regarding the location of a vehicle is transmitted.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a

dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Claim 66:

Carmichael discloses the limitations of:

- *determining compliance or non-compliance with the agreement based on the audit information* (see at least Carmichael, Page 2, Paragraph 1 ("During the 90-day period, the floorplan finance company checks the dealer's 'floor' every 30 days to determine what merchandise has been sold. This method of ensuring that the dealer meets his flooring obligation is known as 'pay-as-sold.'")).

Carmichael does not disclose, but **Mercer**, however, does disclose:

- *initiating the self-audit by requesting an electronic reading of at least one identification tag associated with an asset* (see at least Mercer, Paragraph 0011 ("An RFID tag encoded with vehicle-specific information may be attached to or embedded in both the window sticker and key tag label for identification and tracking purposes."); Paragraph 0033; Paragraph 0045; and Paragraph 0046); and
- *receiving audit information, the audit information including data based on the electronic reading of the at least one identification tag in combination with data associated with the self-audit or data associated with the asset* (see at least Mercer, Paragraph 0011; Paragraph 0012 (Data regarding the location of a vehicle is transmitted.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

Claim 68:

Carmichael does not disclose, but **Mercer**, however, does disclose:

- *wherein the data associated with the asset includes a geographic position associated with the asset* (see at least Mercer, Paragraph 0011; Paragraph 0012 (Data regarding the location of a vehicle is transmitted.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Mercer's method of using RFID tags to track vehicle locations with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership (i.e., is at a location other than the dealership), then that signifies that the vehicle has been sold and a payment is due to the lender.

18. **Claim 52** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer** et al., U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Hull** et al., U.S. Patent Application Publication Number 2004/0041707 A1.

Claim 52:

Carmichael does not disclose, but **Hull**, however, does disclose:

- *wherein the audit information comprises a hash* (see at least Hull, Paragraph 0057 (A hash code is incorporated in a RFID tag.)).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Hull's method of using RFID tags with a hash code to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender.

19. **Claims 53, 54, and 64** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer** et al., U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Adams** et al., U.S. Patent Application Publication Number 2003/0031819 A1.

Claim 53:

Carmichael does not disclose, but **Adams**, however, does disclose:

- *wherein each of the at least one identification tag is fraud resistant* (see at least Adams, Paragraph 0005).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Adams' method of using fraud resistant RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender. Furthermore, it would be obvious to make the tags tamper proof in order to prevent fraud such as the removal of the tag from the vehicle and making it appear that the vehicle has not been sold and is still located at the dealership.

Claim 54:

Carmichael does not disclose, but **Adams**, however, does disclose:

- *wherein each of the at least one identification tag is self-destructing* (see at least Adams, Paragraph 0005).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Adams' method of using fraud resistant RFID tags to track vehicles with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership, then that signifies that the vehicle has been sold and a payment is due to the lender. Furthermore, it would be obvious to make the tags tamper proof in order to prevent fraud such as the removal of the tag from the vehicle and making it appear that the vehicle has not been sold and is still located at the dealership.

Claim 64:

Claim 64 is rejected using the same rationale that was used for the rejection of Claim 53.

20. **Claim 67** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Carmichael**, 1992 in view of **Mercer** et al., U.S. Patent Application Publication Number 2004/0088228 A1, and further in view of **Tallman** et al., U.S. Patent Number 5,708,417.

Claim 67:

Carmichael does not disclose, but **Tallman**, however, does disclose:

- *wherein the data associated with the self-audit includes an audit code* (see at least Tallman, column 2, lines 20-30 and column 5, lines 49-50 ("The computer determines the module identification number from the identification code in the receiver signal 90.")).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate Tallman's method of transmitting a identification code when identifying a location of a vehicle with Carmichael's method of floor plan financing. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of making it easier and more efficient for lenders in floor plan financing to determine whether a vehicle has been removed from the dealership of the borrower. If a vehicle has been removed from a dealership (i.e., is at a location other than the dealership), then that signifies that the vehicle has been sold and a payment is due to the lender. In order to determine the location of a vehicle, there would have to be some way to identify the vehicle, such as an identification code or audit code.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Rosen whose telephone number is 571-270-1850. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm, ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached at 571-272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at

866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nga B. Nguyen/
Primary Examiner, Art Unit 3692